

**DEPARTMENT OF STATE REVENUE**  
**SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 95-0681 CSET**  
**CONTROLLED SUBSTANCE EXCISE TAX**  
**FOR TAX PERIODS: 1995**

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**ISSUE**

**1. CONTROLLED SUBSTANCE EXCISE TAX: IMPOSITION**

**Authority:** IC 6-7-3-5, IC 6-8.1-5-1 (b), Hurst v. Department of Revenue, 720 N.E. 2d 370, 374 (Ind. Tax. 1999).

Taxpayer protests the assessment of Controlled Substance Excise Tax.

**STATEMENT OF FACTS**

Taxpayer was arrested for possession of marijuana. The Indiana Department of Revenue issued a record of Jeopardy Finding, Jeopardy Assessment Notice and Demand on September 28, 1995 in a base tax amount of \$366,260.00. Taxpayer filed a protest to the assessment. A hearing on the protest was scheduled for March 16, 2000. Taxpayer was notified of the hearing. Taxpayer called the hearing officer and left a message stating that he did not have enough money to pay the tax. Taxpayer did not appear for the hearing. A Letter of Findings denying Taxpayer's protest was issued on March 31, 2000. Taxpayer, through his attorney, requested a rehearing. The rehearing was granted. The attorney submitted documentation in lieu of a hearing. Further facts will be provided as necessary.

### **Discussion**

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of marijuana in the State of Indiana. Taxpayer bears the burden of proving that the assessment of tax is incorrect. IC 6-8.1-5-1 (b). Possession of the marijuana can be either actual or constructive. Hurst v. Department of Revenue, 720 N.E. 2d 370, 374 (Ind. Tax. 1999). Although both direct and circumstantial evidence may prove constructive possession, proof of presence in the vicinity of drugs, presence on property where drugs are located, or mere association with the possessor is not sufficient. *Id.*, 374-375. To prove constructive possession there must be a showing that Taxpayer had not only the requisite intent but also the capability to maintain dominion and control over the substance. *Id.*, 374.

Taxpayer sold drugs to another party. At one drug sale, Taxpayer asked that party if he would accept a package from Taxpayer's aunt for a payment of \$50.00. The other party agreed. Taxpayer called the other party to arrange the time the package would be delivered. Taxpayer was present when the package was first scheduled to be delivered. When the package was not delivered as scheduled, Taxpayer dealt with the UPS office to determine why the package had not arrived and determine when it would be delivered. Taxpayer arrived at the other party's house for the delivery of the package. After delivery of the package, Taxpayer carried the package into the kitchen, opened it and took out the marijuana. At that time Taxpayer told the other party that this was what he had been waiting for.

Taxpayer's actions indicate that he intended to receive and possess the marijuana. He also had the capability to maintain dominion and control over the marijuana. He made arrangements for the delivery of the marijuana, controlled the acceptance of the marijuana, carried it to the kitchen, unwrapped it and took out the drugs. He made a statement indicting his intent to maintain dominion and control over the marijuana.

### **Finding**

Taxpayer's protest is denied.